

***United States Court of Appeals
for the Second Circuit***



ADDENDUM

77-1217

UNITED STATES COURT OF APPEALS
For the Second Circuit

UNITED STATES OF AMERICA,
Plaintiff

VS.

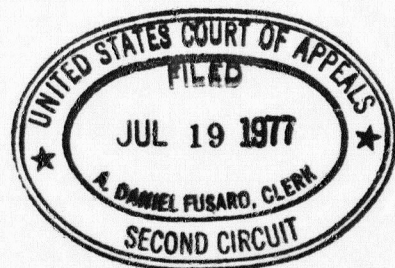
DANIEL BICHARA ZOGBI,
Defendant

Criminal Action No. 76-60-1

On appeal from the United States District Court
for the District of Vermont in Criminal Action No. 76-60-1.

ADDENDUM TO BRIEF OF DEFENDANT-APPELLANT

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§ 2778. Control of arms exports and imports—Presidential control of exports and imports of defense articles and services, guidance of policy, etc.; designation of United States Munitions List; issuance of export licenses

(a)(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall be made in coordination with the Director of the United States Arms Control and Disarmament Agency and shall take into account the Director's opinion as to whether the export of an article will contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.

Registration and licensing requirements for manufacturers, exporters, or importers of designated defense articles and defense services

(b)(1) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) of this section shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this chapter or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(2) Except as otherwise specifically provided in regulations issued under subsection (a)(1) of this section, no defense articles or defense services designated by the President under subsection (a)(1) of this section may be exported or imported without a license for such export or import, issued in accordance with this chapter and regulations issued under this chapter, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(3) No license may be issued under this chapter for the export of any major defense equipment sold under a contract in the amount of \$25,000,000 or more to any foreign country which is not a member of the

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FOREIGN RELATIONS

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North Atlantic Treaty Organization unless such major defense equipment was sold under this chapter.

Criminal violations; punishment

(c) Any person who willfully violates any provision of this section or section 2779 of this title, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$100,000 or imprisoned not more than two years, or both.

Applicability to Canal Zone

(d) This section applies to and within the Canal Zone.

Enforcement powers of President

(e) In carrying out functions under this section with respect to the export of defense articles and defense services; the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969, subject to the same terms and conditions as are applicable to such powers under such Act. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Pub.L. 90-629, Ch. 3, § 38, as added Pub.L. 94-329, Title II, § 212(a) (1), June 30, 1976, 90 Stat. 744.

References in Text. The Export Administration Act of 1969, referred to in subsec. (e), is classified to section 2401 et seq. of the Appendix to Title 50, War and National Defense. Sections 6(c), (d), (e), (f) and 7(a) and (c) thereof are classified, respectively, to sections 2405 (c), (d), (e), (f) and 2406(a) and (c) of the Appendix to Title 50.

Reference to Former Section 1934 of this Title Deemed Reference to This Sec-

tion. Section 212(b)(1) of Pub.L. 94-329 provided in part that: "Any reference to such section [former section 1934 of this title] shall be deemed to be a reference to section 38 of the Arms Export Control Act [this section] and any reference to licenses issued under section 38 of the Arms Export Control Act shall be deemed to include a reference to licenses issued under section 414 of the Mutual Security Act of 1954."

- Sec.
 121.15 Forgings, castings, and machined bodies.
 121.16 "United States."
 121.17 Person.
 121.18 Export.
 121.19 Intransit shipments.
 121.20 Licenses.
 121.21 District Director of Customs.

AUTHORITY: The provisions of this Part 121 issued under sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; secs. 101 and 105, E.O. 10973, 26 F.R. 10469; sec. 6, Departmental Delegation of Authority No. 104, 26 F.R. 10608, as amended, 27 F.R. 9925, 28 F.R. 7231; and Redlegation of Authority No. 104-3-A, 28 F.R. 7231.

SOURCE: The provisions of this Part 121 contained in Dept. Reg. 108.605, 34 F.R. 12029, July 17, 1969, unless otherwise noted.

ENUMERATION OF ARTICLES

§ 121.01 The U.S. munitions list.

Pursuant to the authority cited supra the following articles¹ are hereby designated as arms, ammunition, and implements of war.

CATEGORY I—FIREARMS

(a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive, shotguns with barrels less than 18 inches in length, and all components and parts therefor (see §§ 121.03 and 123.30 through 123.34).

(b) Automatic firearms and all components and parts therefor to caliber .50 inclusive (see § 121.03).

(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application regardless of caliber; and all components and parts therefor.

(d) Firearms silencers.

(e) Bayonets and specifically designed components therefor.

(f) Riflescopes (except sporting type sights including optical) and specifically designed components therefor.

CATEGORY II—ARTILLERY AND PROJECTORS

(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

(b) Military flame throwers and projectors.

(c) Components and parts including, but not limited to, mounts and carriages for the articles in paragraphs (a) and (b) of this category.

CATEGORY III—AMMUNITION

(a) Ammunition for the arms in Categories I and II of this section (see §§ 123.03 and 121.04).

¹ The term "article" shall mean any of the arms, ammunition, and implements of war and technical data relating thereto enumerated in the U.S. Munitions List (see § 123.38).

(b) The following components, parts, accessories, and attachments: Cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition (see § 121.04).

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines, and ammunition loading machines (except hand loading).

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS, AND MINES

(a) Rockets (except meteorological sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, and demolition blocks and blasting caps (see § 121.05).

(b) Launch vehicles, guided missiles, and ballistic missiles, tactical and strategic.

(c) Apparatus, devices, and materials for the handling, control, activation, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category (see § 121.06).

(d) Missile and space vehicle powerplants.

(e) Military explosive excavating devices.

(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, and boron filaments) for the articles in this category when clearly identifiable as arms, ammunition, and implements of war, including the tape wrapping and other techniques for their production.

(g) All specifically designed components, parts, accessories, attachments, and associated equipment for the articles in this category.

CATEGORY V—PROPELLANTS, EXPLOSIVES, AND INCENDIARY AGENTS

(a) Propellants for the articles in Categories III and IV of this section (see § 121.09).

(b) Military explosives (see § 121.10).

(c) Military fuel thickeners (see § 121.11).

(d) Military pyrotechnics except (i) non-irritant smoke and (ii) other pyrotechnic materials having dual military and commercial use.

CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, floating dry docks, and experimental types of naval ships (see § 121.12).

(b) Turrets and gun mounts, missile systems, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed for combatant vessels, including but not limited to, battleships, command ships,

guided missile ships, cruisers, aircraft carriers, destroyers, frigates, escorts, minesweepers, and submarines.

(c) Submarine and torpedo nets, and mine sweeping equipment. Components, parts, attachments and accessories specifically designed therefor.

(d) Harbor entrance magnetic, pressure, and acoustic detection devices, controls and components thereof.

(e) Naval nuclear propulsion plants, their land prototypes and special facilities for their construction, support, and maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities* (see § 123.38).

CATEGORY VII—TANKS AND MILITARY VEHICLES

(a) Military type armed or armored vehicles, military railway trains, and vehicles fitted with, designed or modified to accommodate mountings for arms or other specialized military equipment.

(b) Military tanks, tank recovery vehicles, half-tracks and gun carriers.

(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed for carrying and handling the articles in paragraph (a) of Categories III and IV; military mobile repair shops specifically designed to service military equipment.

(e) Military recovery vehicles.

(f) Amphibious vehicles (see § 121.07).

(g) All specifically designed components, parts, accessories, attachments, and associated equipment, including military bridging and deep water fording kits for the articles in this Category.

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

(a) Aircraft including helicopters designed, modified, or equipped for military purposes, including but not limited to the following: Gunner, bombing, rocket, or missile launching, electronic surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, military trainers, drones, and lighter-than-air aircraft (see § 121.13).

* Applications for licensing the export of any such machinery, device, component, or equipment, or technical data relating thereto, will not be granted if the proposed export does not come within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the item will be exported; unless the license application involves an item (a) which is identical to that in use in an unclassified civilian nuclear powerplant, and its furnishing does not disclose its relationship to naval nuclear propulsion, and (b) which is not for use in a naval propulsion plant.

(b) Spacecraft including manned and unmanned, active and passive satellites.

(c) Military aircraft engines, except reciprocating engines, and spacecraft engines specifically designed or modified for the aircraft and spacecraft in paragraphs (a) and (b) of this category.

(d) Airborne equipment, including but not limited to airborne refueling equipment, specifically designed for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

(e) Launching, arresting, and recovery equipment for the articles in paragraphs (a) and (b) of this category.

(f) Nonexpansive balloons in excess of 3,000 cubic feet capacity, except such types as are in normal sporting use.

(g) Power supplies and energy sources specifically designed for spacecraft.

(h) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) through (g) of this category, excluding propellers used with reciprocating engines and aircraft tires.

(i) Developmental aircraft components known to have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification is scheduled.

(j) Parachutes, except such types as are in normal sporting use, and complete canopies, harnesses, and platforms, and electronic release mechanisms therefor.

(k) Ground effect machines (GEMS), including surface effect machines and other air cushion vehicles, except such machines as are in normal commercial use, and all components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

(l) Inertial systems, and specifically designed components therefor, inherently capable of yielding accuracies of better than 1 to 2 nautical miles per hour circular error of probability (c.e.p.).

CATEGORY IX—MILITARY TRAINING EQUIPMENT

(a) Military training equipment includes but is not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, flight simulation devices, operational flight trainers, flight simulators, radar trainers, instrument flight trainers and navigation trainers.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

CATEGORY X—PROTECTIVE PERSONNEL EQUIPMENT

(a) Military body armor (including armored vests), flak suits and components and parts specifically designed therefor; military helmets, including liners.

(b) Partial pressure suits, pressurized breathing equipment, military oxygen masks, anti-"G" suits, protective clothing for handling guided missile fuel, military crash helmets, liquid oxygen converters used for aircraft (enumerated in Category VIII(a)), missiles, catapults, and cartridge-actuated devices utilized in emergency escape of personnel from aircraft (enumerated in Category VIII(a)).

(c) Protective apparel and equipment specifically designed for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use with the articles in paragraphs (a), (b) and (c) of this category.

CATEGORY XI—MILITARY AND SPACE ELECTRONICS

(a) Electronic equipment assigned a military designation including, but not limited to, the following items: Radar, active and passive countermeasures, counter countermeasures, underwater sound, computers, navigation, guidance, electronic fuzes, object-locating methods and means, displays that represent signals of military use, identification systems, missile and antimissile systems, telemetering and communications electronic equipment; and regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system.

(b) Electronic equipment specifically designed or modified for spacecraft and spaceflight.

(c) Electronic systems or equipment designed, configured, used, or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis, and production of information from the electromagnetic spectrum for intelligence or security purposes.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use or currently used with the equipment in paragraphs (a) through (c) of this category, except such items as are in normal commercial use.

CATEGORY XII—FIRE CONTROL, RANGE FINDER, OPTICAL AND GUIDANCE AND CONTROL EQUIPMENT

(a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensifier and other night sighting and night viewing equipment; military masers and military lasers; gun laying equipment; range, position and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, iner-

tial platforms, and periscopes for the articles of this section.

(b) Inertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this category, except such items as are in normal commercial use.

CATEGORY XIII—AUXILIARY MILITARY EQUIPMENT

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and specifically designed components therefor.

(b) Speech scramblers, privacy devices, cryptographic devices (encoding and decoding), and specifically designed components therefor, ancillary equipment, and especially devised protective apparatus for such devices, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus designed for a military purpose and specifically designed components therefor.

(d) Armor plate.

(e) Concealment and deception equipment, including but not limited to, special paints, decoys, and simulators, components, parts and accessories specifically designed therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction, specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT; RADIOLOGICAL EQUIPMENT

(a) Chemical agents, including lung irritants, vesicants, lachrymators, and tear gases, sternutators and irritant smoke, and nerve gases and incapacitating agents (see § 121.08).

(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals, or to damage crops and plants.

(c) Equipment for dissemination, detection, and identification of, and defense against the articles in paragraphs (a) and (b) of this Category (see § 123.31).

(d) Nuclear radiation detection and measuring devices, except such devices as are in normal commercial use.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

CATEGORY XV—[RESERVED]

CATEGORY XVI--NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT*

(a) Any article, material, equipment, or device, which is specifically designed or specifically modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

(b) Any article, material, equipment, or device, which is specifically designed or specifically modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions except such items as are in normal commercial use for other purposes.

(c) Cold cathode tubes such as krytrons and sprytrons.

CATEGORY XVII--CLASSIFIED ARTICLES

All articles including technical data relating thereto, not enumerated herein, containing information which is classified as requiring protection in the interests of national defense.

CATEGORY XVIII--TECHNICAL DATA

Technical data relating to the articles designated in this subchapter as arms, ammunition, and implements of war (see § 125.01 for definition and § 125.11 for exemptions; see also § 123.38).

CATEGORY XIX--[RESERVED]**CATEGORY XX--SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT***

(a) Submersible vessels, manned and unmanned, designed for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII, and elsewhere in § 121.01 of this subchapter that may be used with submersible vessels.

(d) Equipment, components, parts, accessories, and attachments designed specifically for any of the articles in paragraphs (a) and (b) of this category.*

* See § 123.38. See also Department of Commerce Export Regulations, 15 CFR 373.7.

* Any submersible vessels, oceanographic or associated equipment assigned a military designation shall constitute an article on the U.S. Munitions List, whether expressly enumerated therein.

* Items, including technical data relating thereto, for submarine nuclear propulsion plants which upon review are determined to have significant naval nuclear propulsion applicability will be considered as naval nuclear propulsion items for the purposes of these regulations and processed in accordance with Category VI(e) and the footnote thereto.

CATEGORY XXI--[RESERVED]**CATEGORY XXII--MISCELLANEOUS ARTICLES**

Any article and technical data relating thereto not enumerated herein having significant military applicability, determined by the Director, Office of Munitions Control, Department of State, in consultation with appropriate agencies of the Government and having the concurrence of the Department of Defense.

(Redelegation of Authority No. 104-7-A, 35 FR. 5423, 5424) [Dept. Reg. 108.607, 34 FR. 13274, Aug. 15, 1969, as amended by Dept. Reg. 108.629, 35 FR. 19016, Dec. 16, 1970; Dept. Reg. 108.630, 35 FR. 19994, Dec. 31, 1970; Dept. Reg. 108.646, 36 FR. 20939, Nov. 2, 1971; Dept. Reg. 108.650, 36 FR. 24800, Dec. 23, 1971; Dept. Reg. 108.668, 37 FR. 14694, July 22, 1972]

§ 121.18 Export.

For the purposes of this subchapter the term "export" means the sending or taking out of the United States in any manner any article, equipment, or technical data on the U.S. Munitions List except as may be otherwise expressly provided in a particular context.

§ 123.53 Filing of export and intransit licenses, and shipper's export declarations, with district directors of customs.

(a) Prior to the actual shipment of any arms, ammunition and implements of war on the U.S. Munitions List, the license issued therefor shall be filed with the district director of customs at the port where the shipment is made, except for exports by mail (see § 123.54). A person holding a valid license may file it at one port and if necessary make shipment at another port provided the procedural requirements of the Bureau of Customs are followed. A Shipper's Export Declaration (U.S. Department of Commerce Form 7525-V) shall also be filed with, and be authenticated by, the district director of customs before the arms, ammunition, and implements of war are actually shipped for export. The district director of customs shall endorse each license to show the shipments made. Licenses shall be returned by the district director of customs to the Office of Munitions Control, Department of State, upon expiration of the dates stated thereon, or upon the completion of the shipments, whichever first occurs. (If in particular circumstances an export license is not required—e.g., certain equipment destined for Canada—a Shipper's Export Declaration is nevertheless required to be filed with a U.S. customs officer. Such declaration shall certify that the proposed export is covered by a relevant section of these regulations. Certification shall be made by annotating the declaration "22 CFR Part 123 . . . applicable", identifying the section under which an exemption is claimed. A copy of each such declaration shall be mailed immediately by the shipper to the Office of Munitions Control, Department of State, Washington, D.C. 20520.)

(b) District directors of customs are authorized to permit the shipment of arms, ammunition, and implements of war on the U.S. Munitions List identified on any license when the total value of the shipment does not exceed 10 percent of the aggregate value (not quantity) stated in the license.

[Dept. Reg. 108.605, 34 F.R. 12032, July 17, 1969, as amended by Dept. Reg. 108.646, 36 F.R. 20940, Nov. 2, 1971]

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Rule 16. Discovery and Inspection

(a) Disclosure of Evidence by the Government.

(1) Information Subject to Disclosure.

(A) Statement of Defendant. Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

Rule 51. Exceptions Unnecessary

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52 **RULES OF CRIMINAL PROCEDURE**

Rule 52. Harmless Error and Plain Error

(a) **Harmless Error.** Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) **Plain Error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these

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RELEVANCY

Rule 402

rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Pub.L. 93-595, § 1, Jan. 2, 1975, 88 Stat. 1931.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Pub.L. 93-595, § 1, Jan. 2, 1975, 88 Stat. 1932.

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Pub.L. 93-595, § 1, Jan. 2, 1975, 88 Stat. 1932.

United States Department of Justice

UNITED STATES ATTORNEY

DISTRICT OF VERMONT
RUTLAND, VERMONT 05701

REPLY TO:

P. O. Box 973
Burlington, Vt. 05401

January 27, 1977

Robert G. Bliss, Esquire
TYLER & BRUCE
120 No. Main Street
St. Albans, VT. 05478

Re: U.S. v. ZOGBI, Daniel
Criminal No. 76-60

Dear Bob:

John Hughes will try a case down in Rutland next week so it appears that I am going to be trying the above-captioned case here in Burlington. In reviewing the file I noted that there were approximately four witnesses whom we may call that were not previously listed on the list of witnesses furnished to you. Those individuals are U.S. Customs Inspector Herwod Mayo, who is an inspector at Champlain, N.Y. Also a U.S. Customs Inspector Louis Kreiha, another U.S. Customs inspector at the Port of Champlain, N.Y. Other persons are Ira Trast who is with the Auto-Ordinance Corporation on Williams Lane in West Hurley, N.Y. Lastly, Special Agent Gunar Erickson of the Bureau of Alcohol, Tobacco & Firearms in New York City. These individuals are in addition to those we previously supplied you with and are the extent of the individuals whom we expect we may call in our case in chief.

I also am in the process of obtaining some copies of additional documents which we may offer, to include a Shipper's Export Declaration and ATF Form 6. I believe you have already seen the other documents and parts which we expect to offer already, but I am not sure if you have seen the State Department certification that your client was not registered with the State Department nor did he have an export license from them. If you have not seen this and would like to do so, please give me a buzz in Burlington at 862-6501, ext. 6291 or -6282 and we will make it available for your inspection.

One other thing which I would like to make sure you understand and which I think is clear from Rule 16 pertains to the substance of statements which

R.G. Bliss, Esquire
TYLER & BRUCE
120 No. Main St.
St. Albans, VT.

January 27, 1977

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John Hughes indicated to you in a letter dated October 12, 1976. The statements which John sent you the essence of are statements contained in written reports of the agents in this case. There may well be additional oral statements made by your client which were not reduced to writing at some point in time in connection with this case. We will offer any such oral statements of course, but simply would like to have you be aware that such statements may well be in existence. They are not covered by Rule 16 as I am sure you are aware.

Please do not hesitate to call me if you have any questions with respect to the above.

Very truly yours,

GEORGE W. F. COOK
United States Attorney

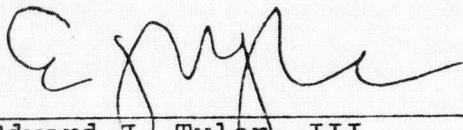
By  JEROME F. O'NEILL
Assistant U. S. Attorney

JFO'N/sm

cc: Hon. Edward J. Trudell
Clerk, U.S. District Court
Burlington, VT. 05401

CERTIFICATE OF SERVICE

I, Edward J. Tyler, III, Esq., of the firm of Tyler & Bruce, do hereby certify that service of the foregoing Addendum to Brief of Defendant-Appellant was made on George W. F. Cook, United States Attorney, by mailing to him a copy thereof, at his address at Rutland, Vermont, by first class mail, postage prepaid on July 15, 1977.



Edward J. Tyler, III

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